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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re E.A., a Person Coming Under the
Juvenile Court Law.

B209007
(Los Angeles County
Super. Ct. No. CK67719)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Marilyn K. Martinez, Juvenile Court Referee. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

E.N. appeals from the order terminating reunification services in the dependency proceeding concerning her daughter E. We affirm.

Discussion

This family came to the attention of DCFS and the courts in April of 2007, when E. was five years old. Reunification services were terminated in June 2008. Mother thus received the 12 months of reunification services to which she was entitled under the statutory scheme. (Welf. & Inst. Code,¹ §§ 361.5, subd. (a)(1)(A), 366.21, subd. (f).) She argues, however, that she was entitled to an additional six months of services. A court may order extended services only on a finding that reasonable services have not been provided (not an issue here) or on a finding that there is "a substantial probability" that the child will be returned to the physical custody of his or her parent within the extended period. (§§ 366.21, subd. (g)(1), 361.5.) Mother argues that there was substantial evidence that E. would be returned to her in the extended period. However, the question before us is different. It is whether there is substantial evidence for the trial court finding that there was no such substantial probability. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) Finding such evidence, we affirm, as we explain:

The dependency was initiated after bounty hunters went to the home where Mother and E. lived, looking for Mother's boyfriend, Ron D. They observed a clear plastic baggie containing methamphetamine and a small scale, both on a dresser in the bedroom. They called police, saying that this was not the first time they had seen narcotics in the home and that they called because they believed that E. was in danger.

Officers who responded observed the baggie and the scale on the dresser, and also observed that Mother was under the influence. They arrested Mother and called DCFS. E. was detained and placed in foster care and the section 300 petition was filed. She was soon placed with her maternal great aunt, where she remained.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

E. told police and DCFS that Mother smoked a white powder that "made me cough," and that she had seen plastic bags filled with white powder. She also said that she wished Mother would stop smoking drugs.

Mother told DCFS that she used drugs occasionally but was not a drug addict, and that the methamphetamine found in her house belonged to Ron D., who used that drug, but not every day. Mother said that Ron D. no longer lived in her home, apparently because bounty hunters had earlier come to the home to look for him.

The detention report also states that E. was in good health, was developing appropriately, and was attending pre-school. She told the social worker "I want you to tell the judge that I love my mom very much."

The detention hearing took place on April 12. At the hearing, E. told the court that she wanted to live with Mother. Mother said that she wanted to drug test, and on April 13, 2007, she tested negative for drugs. However, on May 10, she tested positive.

On May 29, Mother pled no contest to an amended 300 petition which alleged, under subdivision (b), that she had an unresolved history of substance abuse and had smoked drugs in E.'s presence, and that she kept drug paraphernalia within E.'s access, thus endangering E.² In June, reunification services were ordered. The order was drug rehabilitation with random testing, parent education, and individual counseling to address case issues.

A six month review hearing was held in November. DCFS reported that Mother had drug tested on June 28, with negative results, but that on September 13 had tested

² By this time, E.'s father had been identified and had been located in prison. The amended petition included allegations as to him, too, alleging that he had an extensive criminal history which included convictions for possession of a controlled substance and for spousal abuse. He submitted to the jurisdiction of the court and reunification services were ordered. He was released from prison in March 2008, and in May, on findings that his visits with E. were very frequent and of very fine quality, the court granted him an additional six months of services.

positive for methamphetamines and amphetamines. Mother told the social worker that she did not know how this had happened, because she had not used drugs. Mother's next test date was October 2. She did not show up and later told the social worker that she had not received any information about the test. Mother also told the social worker that she was in Narcotics Anonymous and that she had completed her parenting class. The social worker noted that Mother had been cooperative, had called when issues or concerns arose, and had been helpful in getting E. into day care and in doing anything she could for E. Mother and E. had had weekly visits.

DCFS also reported that E.'s caregiver expressed concerns about the emotional strain on E., that E. had begun seeing a therapist, and that E. reported that she enjoyed seeing her mother.

At the six-month hearing, E. said that she wanted to live with Mother. The court found that Mother was in partial compliance with her case plan, and set a section 366.21, subdivision (f) hearing for May.

For that hearing, DCFS reported that Mother had moved and that as a result the drug test site had been changed at least three times, and that Mother had not been compliant with drug testing. She had tested negative on November 28 and January 18, but tested positive on December 13 (again for methamphetamines and amphetamines), and had missed five tests in January, February, March, and April. In November, Mother enrolled in counseling at Valley Trauma Center, but apparently did not actually get counseling because she did not return the Center's phone calls. She later moved away from the Valley Trauma Center's area, and in April, enrolled in counseling at the Community Family Counseling Programs. DCFS recommended termination of reunification services.

For Mother, the hearing was continued until June 2, for a contested hearing. On that date, DCFS submitted its reports. Mother introduced her July 2007 certificate of completion of a parenting class, documents evidencing her attendance at Narcotics Anonymous in May, June, July, August, and September of 2007, and a progress report from Community Family Counseling Programs which showed that on April 8, 2008, she

had enrolled in a counseling program which included individual therapy sessions, parenting classes, and substance abuse classes. The progress report said that Mother appeared very eager to complete what was necessary so that she could regain custody of E., and that she was a good class participant.

Mother testified about her compliance with the elements of her case plan. She had visited every week. Initially, the visits were two hours, but they had increased in length, so that she now had full day visits. She had spent the night at E.'s home every week for the past three or four months.

She had completed a parenting class. She was in individual counseling, and had had between eight and ten sessions. She had attempted to enroll in counseling earlier, but had not been able to enroll in one program because she could not afford the \$60 per session. She could have qualified for a discounted rate, but despite her request, DCFS did not verify her case status for the program. She had also attempted to enroll in counseling at E.'s program, but they would not take her due to a conflict of interest, although she did meet with E.'s counselor in November, January, and March, to discuss E. Other programs turned her down because she was not medically depressed, or did not meet other criteria.

As to drug testing, Mother testified that when she moved to Los Angeles in January, she contacted the social worker, who said that she would change test sites. However, Mother did not receive the new location until February. She missed tests in March because the paperwork the social worker provided her with had the wrong address for the facility. Mother spoke to the social worker about these problems and was told not to worry, that the correct paperwork would be provided to her. She was not provided with the correct address until late April or early May. The social worker never expressed concern about the missed tests. Mother also testified that she had moved frequently in this period and had had three different phone numbers, and that she did not initially understand that she had to drug test.

She had recently had three tests through her counseling agency. She had not provided the results to the social worker. Mother knew that the social worker was in

contact with the counselor and believed that the counselor was providing the social worker with the test results.

Mother testified that she had a full-time job and was about to move into her own apartment. She had no contact with Ron D. Mother testified that he was "the main reason" why E. was taken from her, and when asked about that on cross-examination, testified concerning the bounty hunters. She also testified that the drugs found in the house belonged to Ron D. and were in the pocket of one of his jackets, on a high shelf.

On cross-examination, Mother testified that she did not have a drug problem and had never had one, and that she thought the drug program and testing had been ordered because drugs were found in her home. She did not believe that E. would say that she had seen Mother smoking drugs. She did not believe the positive December test was accurate.

She also testified that she knew that a missed test would count as a dirty test, and that she knew that she was supposed to call every day concerning testing, but did not call. Mother testified that she would forget to call, but after a few days would call, and would be reassured by the social worker.

The court terminated services, finding that while Mother had maintained regular visits and completed a parenting class, she had not made any progress in addressing her drug related issues. The court found that Mother did not "take any responsibility for the drug-related issues," and that if she had, as ordered, promptly participated in drug rehabilitation and counseling, she would have understood those issues.

Mother argues that there was evidence which could have supported a trial court finding that additional reunification services were warranted. She cites the evidence of E.'s bond to Mother, the successful visits, and her partial compliance with her case plan in terms of program completion. She also cites the evidence that difficulties not of her own making prevented her from more fully completing her program.

However, there was also the evidence the trial court relied on. Mother did not call in to test, and she missed tests, even though she knew that calling was her responsibility and that a missed test would be considered a dirty test. She had only recently enrolled in

individual counseling, and thus had no evidence that she had made progress in counseling. Perhaps most importantly, after a year of reunification services, she did not understand the reasons for the dependency, which was not based on Ron D.'s problems, but on her own. Though Mother admitted to drug use, and was under the influence at the time police first went to her house, and had positive drug tests, she did not believe that she had a drug problem.

The court found that if Mother had promptly complied with orders for programs, and had had a year of such programs, she might well have understood the problems that led to the dependency and taken steps to resolve those problems. The court also found that Mother had not promptly complied, and that there was no substantial probability that another six months would make the difference. The evidence supports those findings.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.